

P.K.Mony. Vs. Biju Mathew.

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SooperKanoon Citation : sooperkanoon.com/911286

Court : Kerala

Decided On : Nov-25-2010

Judge : M. L. Joseph Francis, J.

Acts : Negotiable Instruments Act - Section 138; Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 357(1)

Appeal No. : Crl.Rev.Pet.No. 1209 of 2001

Appellant : P.K.Mony.

Respondent : Biju Mathew.

Advocate for Pet/Ap. : SRI.R.BINDU, Adv.

Judgement :

1. This Revision petition is filed by the accused in C.C. No. 569 of 1995 on the file of Judicial First Class Magistrate Court - I, Muvattupuzha challenging the conviction and sentence passed against him for the offence punishable under Section 138 of N.I. Act. The cheque amount was Rs.40,000/-. In the Trial Court, the accused was convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.50,000/-. In the appeal the sentence was modified as simple imprisonment for a period of three months and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of one month. If the fine amount is realised a sum of Rs.4,000/- to be paid to the complainant as compensation.

2. I heard the learned counsel for the revision petitioner, learned counsel for the complainant and the public prosecutor.

3. The learned counsel appearing for the revision petitioner reiterated the same contention raised before the Trial Court and the appellate court. Learned counsel for the complainant supported the judgment of the court below.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the N.I. Act and that the Revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby confirmed.

5. In the decision reported in *Damodar S. Prabhu v. Sayed Babalal H* (2010(2) KHC 428 (SC)), it was held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Considering the facts and circumstances of the case, I am of the view that sentencing the accused to pay a fine of Rs.40,000/- would meet the ends of justice. The said fine shall be paid as compensation under Section 357(1) of Cr.P.C. The Revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within three months from today and to produce a memo to that effect before the Trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforesaid period, he shall suffer simple imprisonment for three months by way of default sentence. The amount if any deposited in the trial court by the accused can be given credit to.

6. In the result, this Revision petition is disposed of confirming the conviction entered by modifying the sentence imposed on the revision petitioner.